IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4612 OF 2005

Mr.K.S.K.Shetty and Ors. ..Applicants

Vs.

Jayesh Manubhai Shah & Anr. ..Respondents

...

Mr.Ashok Kumar Upadhyay i/b
M/s.K.R.Tiwari & Co. for Applicants
Mr.J.A.Udaipuri for Respondent no.1
Mr.S.R.Shinde A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPT. 27,2005

P.C.

1. Heard the learned advocate for the applicants, learned advocate for the respondent-original complainant, and the learned A.P.P. for State.

2. The applicants are seeking quashing of proceedings relating to C.C.No.1288/S/2003 and C.C.No.34/S/2003. The said cases are pending before the learned Metropolitan Magistrate, Mazgaon, Mumbai. The case i.e. C.C.No.1288/S/2003 is under Section 138 of Negotiable Instruments Act

and C.C.No.34/S/2003 is under Section 420 of IPC.

3. I have perused the complaint relating to C.C.No.1288/S/2003. In the said complaint, it is specifically stated that accused no.2 is the Chairman and Managing Director and accused no.3 is also the Director of the Company i.e. accused no.1. Thereafter, it is specifically stated that both these accused represent the day-to-day affairs, management and executive decisions of accused no.1. The details relating to issuance of cheque, dishonour of cheque, notice being issued in time and thereafter, the complaint being filed, are clearly stated in the complaint. On reading the complaint as a whole, all the necessary ingredients have been stated in the complaint. In this view of the matter, there is sufficient material in respect of the applicants, hence, no case is made out for quashing of the proceedings relating to C.C.No.1288/S/2003.

4. The learned advocate for the applicants has relied upon the order dated 25.2.2005 passed by this Court in Summons for Judgment No.374 of 2003

in Sum.Suit No. 3918 of 2002. He has placed reliance on para no.3 wherein it is observed that defendant nos.2 and 3 i.e. applicant nos.1 and 3 have not personally taken the loan and therefore, they are not personally liable. It is well settled that civil proceedings and criminal proceedings are entirely different. I have perused the complaint. As observed earlier on reading the complaint prima facie offence is made out under Section 138 of Negotiable Instruments Act. Thus, I find no merit in this submission. Moreover, in this case, affidavit of the complainant has already been taken on record by way of his examination in chief and the matter is pending for cross-examination of the complainant.

5. As far as C.C.No.34/S/2003 is concerned, in the said case, process is issued under Section 420 of IPC. There is no further progress in the matter. The learned advocate for the applicants submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. It is further submitted that if the process issued against the applicants is set aside,

the proceedings in respect of the applicants, would come to an end. In this case, for the reasons recorded in the decision of this Court in the case of **V.K.Jain and others Vs. Pratap V. Padode reported in 2005(3) Mh.L.J.778,** I am of the opinion that the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicants prefer a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

6. Liberty is granted to the applicants to prefer the necessary revision before the concerned Sessions Court in relation to process issued under Section 420 in C.C.No.34/S/2003. The learned advocate for the applicants makes a statement that the necessary revision will be preferred within four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks.

. The learned advocate for the respondent no.1-complainant fairly states that no objection

will be raised in respect of delay in filing the revision.

7. On the necessary revision being preferred by the applicants before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

8. Criminal Application is disposed of.

[V.K.TAHILRAMANI,J.]